

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. 98-704

CLEANUP AND ABATEMENT ORDER
FOR
PETER DE VISSER AND ABRAHAM DE VISSER, dba DE VISSER BROS.
AND
DE VISSER BROS. DAIRY
STANISLAUS COUNTY

This Order is issued to Peter de Visser and Abraham de Visser, dba de Visser Bros., and de Visser Bros. Dairy (hereafter collectively referred to as Discharger) based on provisions of California Water Code Section 13304 which authorizes imposition of a Cleanup and Abatement Order.

The Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

1. De Visser Bros. Dairy is in the west 1/2 of Section 2 T3S, R10E, MDB&M, at 4500 Albers Road, Oakdale, Stanislaus County. The dairy facility is on the west side of Assessor's Parcel No. 014-09-003, which encompasses 18.59 acres, owned by Peter de Visser, dba de Visser Bros. Wastewater is discharged to the east half of Parcel No. 014-09-003 and to adjacent Parcel No. 014-09-005 (86.76 acres), owned by Abraham de Visser. According to California Department of Food and Agriculture, the de Visser Bros. Dairy milks approximately 400 cows.
2. During an inspection on 15 May 1997, Regional Board Staff observed dairy wastewater being discharged from a wastewater retention pond through a valve and pipe into the tailwater drain on the pasture east of the dairy. The tailwater drain is known as Albers Drain. The drain flows south from the pond then west across Albers Road. The electrical conductivity (EC) of the wastewater in the drain was 6200 Φ mhos/cm.
3. A Notice of Violation (NOV) was issued the de Visser Bros. Dairy on 19 May 1997 in response to the 15 May 1997 inspection. The NOV requested a written report outlining improvements to prevent further discharge into Albers Drain be submitted by 10 June 1997. No such report was ever submitted. Albers Drain discharges into MID Canal which subsequently discharges to the Stanislaus River. Such discharge of manure and wastewater at the facility is a violation of Subchapter 2, Chapter 7, Division 2, Title 27 of the California Code of Regulations, and threatens to create a condition of pollution or nuisance.
4. A follow-up inspection, by Board Staff on 23 June 1997, was to determine if the dairy wastewater discharge into Albers Drain had been abated. Staff observed that the wastewater retention pond was full, and a small flow (approximately 5 gallon per minute) was discharging through the valve and pipe into Albers Drain.
5. On 3 September 1997, Regional Board Staff conducted another inspection and found dairy wastewater in Albers Drain at Kemper Road. Further investigation revealed that a settling pond at de Visser Bros. Dairy had overflowed and the wastewater had discharged into Albers Drain. It was noted in the inspection report that the adjacent pasture appeared to have recently been irrigated and irrigation tailwater could have diluted the dairy wastewater. The EC of the wastewater overflow

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from the settling pond was 2000-2200 Φ mhos/cm. The EC of the water in Albers Drain was 900 Φ mhos/cm at Albers Road, while the EC at Kemper Road was 700 Φ mhos/cm.

6. On 24 September 1997, the deVisser Bros. Dairy was issued a Notice of Violation for allowing dairy wastewater and runoff to discharge off property under the Dairy's control. The Notice of Violation required a written report be submitted by 1 November 1997 outlining improvements to prevent future discharge of wastewater into Albers Drain. Mr. de Visser responded by letter on 6 October 1997.
7. On 17 December 1997, Regional Board Staff conducted another inspection in response to finding wastewater in Albers Drain at Albers Road. The source of the wastewater was leachate from silage stored next to the drain. EC of the leachate was 9200 Φ mhos/cm. The wastewater was observed flowing on the west side of Albers Road. This inspection also revealed that wastewater from the separation pond had discharges into the drain above the wastewater retention pond.
8. A Notice of Violation was issued on 18 December 1997 for the discharge of waste into Albers Drain.
9. On 6 May 1998, Regional Board Staff conducted a follow-up inspection to determine whether any improvements had been implemented to bring the dairy into continuous compliance with water quality regulations. The inspection revealed a discharge of wastewater into Albers Drain. The wastewater retention pond was nearly full and wastewater was flowing through a pipe on the east side of the pond into the tailwater drain of the adjacent pasture. Wastewater was flowing south from the pipe, then west along the property line and through a culvert under Albers Road. The EC reading taken at the discharge at the east end of the pipe was 6400 μ mhos/cm. The EC reading at Albers Road was 6000 μ mhos/cm with an approximate flow of 20 gallons per minute. No improvement had been made to prevent discharges into the drain.
10. Surface water discharges to Albers Drain discharges into MID Main Canal which subsequently discharges to the Stanislaus River. The beneficial uses of the Stanislaus River are municipal, domestic, agricultural, and industrial supply; recreation, groundwater recharge; electric power generation; freshwater fish habitat; fish migration and spawning; and wildlife habitat.
11. Groundwater beneficial uses are domestic, industrial, and agricultural supply.
12. Title 27, Division 2, Chapter 7, Subchapter 2, Article 1, Section 22562 (a) of the California Code of Regulations (CCR) states, in part:

"Confined animal facilities shall be designed and constructed to retain all facility wastewater generated, together with all precipitation on, and drainage through, manured areas during a 25-year, 24-hour storm."
13. The Discharger has violated Title 27, CCR, Section 22562(a) by failing to design and construct its confined animal facility to retain all facility wastewater generated, together with all precipitation on,

and drainage through, manured areas during a 25-year, 24-hour storm; and has caused or permitted and threatens to cause or permit waste to be discharged into the waters of the state and has created, or threatens to create, a condition of pollution or nuisance.

14. Title 27, Division 2, Chapter 7, Subchapter 2, CCR contains the following discharge specifications for groundwater protection:
 - a. Manure storage areas shall be managed to minimize percolation of water into underlying soil.
 - b. Application of wastewater to cropland and disposal fields shall be managed to minimize the percolation to groundwater.
 - c. Animal containment facilities shall have adequate surface drainage to prevent continuous accumulation of surface water in corrals and feed yards.
 - d. Application of wastewater to cropland and disposal fields shall be at rates that are reasonable for the crop, soil, climate, special location situations, management system, and type of manure.
15. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up such waste or abate the effects thereof or, in the case of threatened pollution or nuisance, take other necessary remedial action. Upon failure of any person to comply with such cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring such person to comply therewith. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the fact may warrant.”
16. Section 13304(c)(1) of the California Water Code provides that:

“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising the cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the

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governmental agency and state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution and Abatement Account or other available funds."

17. Section 13267(b) of the California Water Code provides that:

"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports."

18. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.

19. Any person affected by this action of the Board may petition the State Water Resources Control Board to review the action. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to Sections 13267 and 13304 of the California Water Code, Peter de Visser and Abraham de Visser, dba de Visser Bros., and de Visser Bros. Dairy shall:

1. Except in the case of runoff generated during a storm exceeding a 25-year, 24-hour event, immediately abate any and all discharges of manured wastewater into surface waters and surface water drainages, including roadside ditches.
2. Abate forthwith any and all discharges of leachate from the feed storage area into surface water and surface water drainages, including roadside ditches.
3. Operate the de Visser Bros. Dairy in compliance with Title 27, Division 2, Chapter 7, Subchapter 2, California Code of Regulations.
4. Conduct daily inspections of waste holding areas and cropland being irrigated with wastewater, and report any off-property discharge of wastewater containing manure to the Regional Water Quality Control Board within 72 hours of discovering the discharge.
5. Reimburse the Regional Water Quality Control Board, the State Water Resources Control Board, the Department of Fish and Game, and any other state or federal agency providing assistance to the Regional Board in administering this order for reasonable costs associated with oversight of actions taken in response to this Order. By **20 June 1998** submit the name and address to be used for

billing purposes for reimbursement charges. Failure to provide the name and address and/or failure to reimburse the Regional Board for reasonable oversight costs shall be considered a violation of this Order.

6. By **15 July 1998** the Discharger shall submit a plans and a construction schedule for permanent modifications to the wastewater distribution system and other portions of the dairy waste management system that will be completed by **15 September 1998** and that will prevent off-property discharges of wastewater containing manure. Once approved by staff, the construction schedule shall become part of this Order and will be enforceable under this Order.
7. By **19 October 1998**, submit a report presenting a nutrient and water balance study for the facility and including a description of any operational changes necessary to operate the facility in compliance with Title 27, Division 2, Chapter 7, Subchapter 2 of the California Code of Regulations.
8. By **19 October 1998** submit a report describing the completed modifications to the dairy waste management system and any related improvements in wastewater management necessary to ensure that all wastewater is retained on the facility property.

The Order is effective upon the date of signature.

GARY M. CARLTON, Executive Officer

21 May 1998
(Date)

SJW